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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,812	08/19/2005	Jennifer Ruth Gamble	DAVI253.001APC	5804
20995 7590 03/12/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER				
SWOPE, SHERIDAN				
ART UNIT		PAPER NUMBER		
1652				
NOTIFICATION DATE		DELIVERY MODE		
03/12/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary

Application No.

10/526,812

Applicant(s)

GAMBLE ET AL.

Examiner

SHERIDAN SWOPE

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 and 49-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-41 and 49-51 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicants' responses of December 27, 2007 and February 25, 2008 are acknowledged. It is acknowledged that Claims 49-51 have been added and Claims 1, 7-12, 21-26, 33-38, and 49 have been amended. Claims 1-41 and 49-51 are pending.

Election/Restrictions

The following Restriction/Election requirement replaces the requirement mailed June 27, 2007.

Election/Restrictions

Restriction is required under 35 U.S.C. 121.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, Claims 1-12 and 49-51, in part, and Claim 14, drawn to a method for modulating endothelial cell activity in vitro.

Group II, Claims 1-12 and 49-51, in part, and Claims 13 and 15-26, drawn to a method for modulating endothelial cell activity in vivo.

Group III, Claims 27-41, drawn to a method of treatment of inappropriate endothelial cell activity in a mammal.

For each of Inventions I-III above, restriction to two of the following is also required under 35 USC 121. Therefore, election is required of one of Inventions I-III and one of Inventions (A)-(JJ), as follows.

If Invention I is elected, elect one of:

- (A) Intercellular permeability
- (B) Intracellular permeability

If Invention I is elected, also elect one of:

- (C) Protein molecule
- If (C) is elected, elect one of:
 - (i) A Thr⁴¹⁰Ala protein kinase C molecule

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- (ii) Angiopoietin
- (iii) A small molecule antagonist
- (iv) An antibody
- (v) A PKC ζ analog
- (vi) An antigen
- (vii) A ribosomal protein

(D) Non-protein molecule

If (D) is elected, elect one of:

- (i) A nucleic acid molecule encoding protein kinase C
- (ii) Chelerythrine chloride
- (iii) Bisindolylmaleimide
- (iv) A small molecule antagonist
- (v) RNA
- (vi) a ribosomal RNA
- (vii) DNase
- (viii) RNA aptamer
- (ix) antisense nucleic acid

If Invention I is elected, also elect one of:

- (E) Regulation of transcription
- (F) Regulation of translation

If Invention I is elected, also elect one of:

- (G) Modulation in vivo
- (H) Modulation in vitro

If Invention II is elected, elect one of:

- (I) Intercellular permeability
- (J) Intracellular permeability

If Invention II is elected, also elect one of:

(K) Protein molecule

If (K) is elected, elect one of:

- (i) A Thr⁴¹⁰ Ala protein kinase C molecule
- (ii) Angiopoietin
- (iii) A small molecule antagonist
- (iv) An antibody
- (v) A PKC ζ analog
- (vi) An antigen
- (vii) A ribosomal protein

(L) Non-protein molecule

If (L) is elected, elect one of:

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- (i) A nucleic acid molecule encoding protein kinase C
- (ii) Chelerythrine chloride
- (iii) Bisindoylmalimide
- (iv) **A small molecule antagonist**
- (v) RNA
- (vi) a ribosomal RNA
- (vii) DNazyme
- (viii) RNA aptamer
- (ix) antisense nucleic acid

If Invention II is elected, also elect one of:

- (M) Regulation of transcription
- (N) Regulation of translation

If Invention III is elected, elect one of:

- (O) Intercellular permeability
- (P) Intracellular permeability

If Invention III is elected, also elect one of:

- (Q) Protein molecule
 - If (Q) is elected, elect one of:
 - (i) A Thr⁴¹⁰Ala protein kinase C molecule
 - (ii) Angiopoietin

- (R) Non-protein molecule
 - If (R) is elected, elect one of:
 - (i) A nucleic acid molecule encoding protein kinase C
 - (ii) Chelerythrine chloride
 - (xv) Bisindoylmalimide

If Invention III is elected, also elect one of:

- (S) Regulation of transcription
- (T) Regulation of translation

If Invention III is elected, also elect one of:

- (U) Inflammatory response
- (V) Unwanted angiogenesis
- (W) Solid tumors
- (X) Blood born tumors
- (Y) Metastasis
- (Z) Benign tumors
- (AA) Rheumatoid arthritis
- (BB) Crohn's disease
- (CC) Atherosclerosis

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- (DD) Obesity
- (EE) Endometriosis
- (FF) Ocular angiogenic disease
- (GG) Psoriasis
- (HH) Facia telangiectasias
- (II) Truncal telangiectasias
- (JJ) Osler-Webber Rendau syndrome

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical feature for the following reasons: The technical feature linking Groups I-III appears to be that they all relate to regulation of endothelial cell activity by protein kinase C. However, regulation of endothelial cell activity was known in the art. For example, Anrather et al, 1999 teach regulation of endothelial cell activity by protein kinase C encoding nucleic acid molecules, which anticipates Claim 1. Therefore Groups I-III share no special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art. Furthermore, the methods of Groups I-III do not use the same reagents or produce the same results. Accordingly, Groups I-III are not so linked by the same or a corresponding special technical feature as to form a single general inventive concept.

Searching more than one of Groups I-III would represent a burden on the Office for the following reasons. A search for any one of the methods of Groups I-III would not encompass a search for any other said methods because the methods do not share a special technical feature of steps and products used, or results produced. Thus, the search for more than one of Groups I-III would be a burden on the Office.

These inventions lack Unity of Invention for the reasons given above. Furthermore, each invention has acquired a separate status in the art due to their recognized divergent subject matter and, thus, searching more than one invention would be a burden on the Office. Therefore, restriction for examination purposes, as indicated, is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of an invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Final Comments

To insure that each document is properly filed in the electronic file wrapper, it is requested that each of amendments to the specification, amendments to the claims, Applicants' remarks, requests for extension of time, and any other distinct papers be submitted on separate pages.

It is also requested that Applicants identify support, within the original application, for any amendments to the claims and specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan L. Swope whose telephone number is 571-272-0943. The examiner can normally be reached on M-F; 9:30-7 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Nashed can be reached on 571-272-092834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published application may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SHERIDAN SWOPE/
Primary Examiner, Art Unit 1652